**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 10771 of 2001**

**HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**CHIEF DISTRICT HEALTH OFFICER - Petitioner(s)**

**Versus**

**JEBUNNISHA AHMED HUSSAIN - Respondent(s)**

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**Appearance :**
MR PV HATHI for Petitioner(s) : 1,
MR KISHOR M PAUL for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 07/02/2006**

**ORAL JUDGMENT**

1. This petition under Article 227 of the Constitution of India is directed agaisnt the award dated 8th August 2001 passed by the Labour Court, Jamnagar in LCJ No.387 of 1992 whereby the respondent was directed to reinstate the respondent workman on her post with 50% back wages.

2. The short facts of the case are that the respondent was working as Midwife/Attendant in maternity ward in Primary Health Centre. Since the said ward was closed the petitioner was relieved from service. She, therefore, raised a dispute which was referred to the Labour Court, Jamnagar, and registered as Reference (LCJ) No.387 of 1992. The Labour Court, after hearing the parties, passed the aforesaid award.

3. Mr.Hathi, learned Advocate for the petitioner submitted that the respondent workman was a daily wager and was not entitled to invoke the provisions of the Industrial Disputes Act. He further submitted that no reinstatement could have been otherwise ordered as admittedly there was no post and the ward was closed at Okha. He lastly submitted that the award of 50% back wages was unjustified and unwarranted.

4. As regards the contention that the respondent workman was a

daily wager is concerned, the same is misconceived inasmuch as merely because he was a daily wager it cannot be said that he was not an employee. This contention was not rightly accepted by the Labour Court and I do not find any substance in the said contention.

5. As regards the second contention that there was no post and the ward was closed is concerned, in that case the petitioner ought to have followed the provisions of section 25F of the Act. Since the said provisions are not followed, the retrenchment is bad and illegal. Therefore, at this stage the petitioner cannot take the contention that the ward is closed. The Labour Court has clearly recorded a finding that the petitioner has not followed the procedure under section 25F and therefore, I am of the view that the Labour Court has rightly granted reinstatement.

6. As regards the third contention with regard to back wages is concerned, Mr. Paul, learned Advocate for the respondent stated that the respondent is not insisting for back wages. Even otherwise the law on the subject is settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to

be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Similar view has been taken in the cases of A.P. State Road Transport Corporation and Ors. V. Abdul Kareem, reported in (2005)6 SCC 36, U.P.S.R.T.C. V. Mahendra Nath Tiwari & Anr. Reported in 2005 AIR SCW 6042 and U.P. State Brassware Corpn. Ltd. & Anr. V. Udai Narain Pandey, reported in 2005 AIR SCW 6314. In above view of the matter, I am of the opinion that the respondent cannot be said to be entitled for back wages.

7. Mr. Hathi has relied upon a decision in the case of Haryana Tourism Corporation Ltd. Vs. Fakir Chand and others, reported in 2004 SCC (L&S) 36 wherein it is held that on the facts of the case interest of justice would be met if the appellant Corporation is directed to pay Rs.70000/- as compensation in lieu of reinstatement. The compensation has been granted on the facts of that particular case and it cannot be a precedent in all cases where reinstatement has been granted. In the

present case it was found that the retrenchment was illegal and the respondent is not prepared to accept the compensation. However, it will be open to the petitioner to pay appropriate compensation if the respondent is persuaded to agreement for such compensation.

8. In the result, the petition is partly allowed. The impugned award qua back wages is quashed and set aside. The award of the Labour Court is modified to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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